

(b) The charged party or counsel for the charged party will be granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of 19 CFR 353.30 and § 355.20, or their successor regulations.

PART 355—COUNTERVAILING DUTIES

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AUTHORITY: 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

SOURCE: 53 FR 52344, Dec. 27, 1988, unless otherwise noted.

Subpart A—Scope and Definitions

§ 355.1 Scope.

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 *et seq.*) (“the Act”), relating to the imposition of countervailing duties, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103-465; 108 Stat. 4809 (Dec. 8, 1994) and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) (“Trade Agreements Act”), relating to subsidies on quota cheese. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 355.1, 355.12(b)(2), 355.13(a), 355.15(a)(1), 355.15(a)(2)(ii), 355.15(a)(4),

355.15(b), 355.15(c), 355.20(a)(2)(ii), 355.20(a)(4), 355.20(d), 355.20(e), 355.22(a), 355.22(c), 355.22(d), 355.22(f), 355.22(i)(5)(ii), 355.22(j), 355.31(a)(1), 355.31(c), 355.38(i), 355.40. These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

[60 FR 25136, May 11, 1995]

§ 355.2 Definitions.

(a) *Act.* *Act* means the Tariff Act of 1930, as amended.

(b) *Agreement.* *Agreement* means the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, that is, the Subsidies Code, and any amendments accepted by the United States.

(c) *Commission.* *Commission* means the United States International Trade Commission.

(d) *Country.* *Country* means a foreign country or a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries in a customs union outside the United States.

(e) *Customs Service.* *Customs Service* means the United States Customs Service of the United States Department of the Treasury.

(f) *Department.* *Department* means the United States Department of Commerce.

(g) *Factual information.* *Factual information* means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of facts in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Industry.* “Industry” means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section

771(4)(C) of the Act, an *industry* may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(i) *Interested party.* “Interested party” means:

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the country in which the merchandise is produced (the affected country);

(3) A producer in the United States of the like product or seller (other than a retailer) in the United States of the like product produced in the United States;

(4) A certified or recognized union or group of workers which is representative of the industry or of sellers (other than retailers) in the United States of the like product produced in the United States;

(5) A trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (i)(3), (i)(4), or (i)(5) of this section.

(j) *Investigation.* An “investigation” begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, or (4) an order.

(k) *The merchandise.* “The merchandise” means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(l) *Party to the proceeding.* “Party to the proceeding” means any interested party, within the meaning of paragraph (i) of this section, which actively participates, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party *party to the proceeding* status in a subsequent decision by the Secretary subject to judicial review.

(m) *Person.* *Person* includes any *interested party* as well as any other individual, enterprise, or entity, as appropriate.

(n) *Proceeding.* A *proceeding* begins on the date of the filing of a petition, publication of notice of initiation under § 355.11, or publication of notice of initiation under § 355.22(i) if the review is of the merchandise subject to an understanding or other kind of agreement accepted § 355.17(b), and ends on the date of publication of the earliest of notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) a negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(o) *Producer; production.* “Producer” means a manufacturer or producer. “Production” means manufacture or production.

(p) *Sale; likely sale.* A “sale” includes a contract to sell and a lease that is equivalent to a sale. A “likely sale” means a person’s irrevocable offer to sell.

(q) *Secretary.* “Secretary” means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make final determinations under §§ 355.18(i), 355.20, and 355.22(i). The Deputy Assistant Secretaries for Import Administration, Investigations, and Compliance have other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings.

(a) *Official record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of

each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the FEDERAL REGISTER, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under §§ 355.31(b)(2), 355.32(d), 355.32(g), or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 355.4(a), governmental memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 355.31(d)). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 355.4 Public, proprietary, privileged, and classified information.

(a) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated proprietary.

(b) *Proprietary information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) The exact amounts of the gross or net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official public statements or published documents);

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the

Secretary decides that the information should not be released to the public or to parties to the proceeding.

(d) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

§ 355.5 Library of foreign subsidy practices and countervailing measures.

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in § 355.31(d).

§ 355.6 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573) (for purposes of this subpart, referred to as “the 1984 Act”), the amendments to the Act made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraphs (a)

or (b) of this section would prevent the Department from complying with other requirements of law.

§ 355.7 De minimis net subsidies disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% *ad valorem*, or the equivalent specific rate.

Subpart B—Countervailing Duty Procedures

§ 355.11 Self-initiation.

(a) *In general.* (1) If the Secretary determines from available information that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Countervailing Duty Investigation.” The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

(iii) A summary of the available information that would, if accurate, support the imposition of countervailing duties.

(b) *Information provided to the commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

§ 355.12 Petition requirements.

(a) *In general.* Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may file on behalf of an industry a petition under this section requesting the imposition of countervailing duties equal to the alleged subsidy, if that person has reason to believe that:

(1) A subsidy is being provided with respect to the merchandise, and

(2) If the merchandise is from a country entitled to an injury test for the merchandise, an industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise.

Factual information in the petition shall be certified, as provided in § 355.31(i).

(b) *Contents of petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition;

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337 or 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current U.S. tariff classification number;

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(6) The names and addresses of each person the petitioner believes benefits from the subsidy and exports the merchandise to the United States and the proportion of total exports to the United States which each person accounted

for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

(8) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

(9) The volume and value of the merchandise during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR §§207.11 and 207.26;

(12) If the petitioner alleges “critical circumstances” under §355.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) An export subsidy inconsistent with the Agreement; and

(13) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing with the Commission.* If the merchandise is from a country entitled to an injury test for

the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary status of information.* The Secretary will not consider any factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of §355.32.

(e) *Amendment of petition.* The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under §355.31.

(f) *Where to file; time of filing; format and number of copies.* The requirements of §355.31(d), (e), and (f) apply to this section.

(g) *Notification of affected country's representative.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in §355.31(e)(2), to a representative in Washington, DC, of the government of the affected country.

(h) *Petition based upon derogation of an international undertaking on official export credits.* In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) *Assistance to small businesses; additional information.* (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of §355.13.

(2) For additional information concerning petitions, contact the Deputy

Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room B099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230; (202) 377-5497.

(j) *Limitation on communication before initiation.* (1) Except as provided in paragraph (j)(2) of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of §355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0625-0148)

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

§355.13 Determination of sufficiency of petition.

(a) *Determination of sufficiency*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under §355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of §355.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 702(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting “a maximum of 40 days” for “20 days”.

(b) *Notice of initiation.* If the Secretary determines that the petition is sufficient under paragraph (a) of this

section, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Countervailing Duty Investigation.” The notice will include the information described in §355.11(a)(2). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal, if appropriate, and publish in the FEDERAL REGISTER notice of “Dismissal of Countervailing Duty Petition,” summarizing the reasons for dismissal.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

§355.14 Request for exclusion from countervailing duty order.

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under §355.11 or §355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary's notice of initiation (except programs that the Secretary has previously found, in a notice published

under § 355.20 or § 355.22(c)(8), not to be countervailable) and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

§ 355.15 Preliminary determination.

(a) *In general.* (1) Not later than 65 days after the date on which the Secretary initiates an investigation under § 355.11 or § 355.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The individual countervailing duty rate for each person investigated and an all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 355.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Sec-

retary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit or bond equal to the estimated net subsidy.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number or complex nature of the alleged subsidies;

(ii) Novel issues raised;

(iii) The need to determine the extent to which particular subsidies are used by individual producers or exporters; or

(iv) Large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation,

unless the Secretary finds compelling reasons to deny the request.

(d) *Postponement to investigate upstream subsidies.* (1) Any interested party shall submit in writing any allegation of upstream subsidies not later than 10 days before the scheduled date for the Secretary's preliminary determination under this part.

(2) If the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination under paragraph (b) or (c) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the FEDERAL REGISTER notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

(2) If the Secretary decides to postpone the preliminary determination under paragraph (d)(2) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's preliminary determination and will publish in the FEDERAL REGISTER notice of "Postponement of Preliminary Countervailing Duty Determination" stating the reasons for the postponement.

(f) *Expedited preliminary determination.* Not later than 55 days after the initiation of an investigation under § 355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of § 355.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable

written waiver of verification and agrees to a preliminary determination based on information in the record on the 50th day of the investigation, the Secretary will make an expedited preliminary determination.

(g) *Commission access to information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(h) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

§ 355.16 Critical circumstances findings.

(a) *In general.* If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 355.11, the Secretary will make a finding whether:

(1) Any alleged export subsidy that benefits the merchandise is inconsistent with the Agreement; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect

that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the Secretary's preliminary determination under §355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the FEDERAL REGISTER notice of the preliminary finding.

(c) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, either before or at the time of an affirmative preliminary determination under §355.15, any suspension of liquidation ordered under §355.15 will apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under §355.15, the Secretary will amend the order suspending liquidation to apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date suspension of liquidation was first ordered.

(d) *Final finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under §355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension

of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in self-initiated investigations.* In investigations initiated under §355.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive imports.* (1) In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively short period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending approximately three months later. However, if the Secretary finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§355.17 Termination of investigation.

(a) *Withdrawal of petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under §355.11, after notifying all parties to the proceeding

and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Countervailing Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of paragraph (b)(1) of this section whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(3) At the direction of the President of the United States or a designee, the Secretary will modify any understanding or other kind of quantitative restriction agreement accepted under paragraph (b)(1) of this section as a result of consultations entered into under section 761(a) of the Act.

(c) *Negative determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of suspension of liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of ter-

mination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 355.18 Suspension of investigation.

(a) *Agreement to eliminate or offset completely a subsidy or to cease exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise:

(1) To eliminate or to offset completely the net subsidy with respect to the merchandise; or

(2) To cease exports of the merchandise not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement eliminating injurious effect.* (1) As provided in this paragraph and paragraph (b)(2) or (b)(3), the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement

with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account, in addition to other factors the Secretary considers appropriate, the factors listed in section 704(a)(2)(B) of the Act. To the extent practicable, the Secretary will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not party to the proceeding.

(c) *Definition of "substantially all."* For purposes of paragraphs (a) and (b)(2) of this section, exporters which account for "substantially all" of the merchandise means exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or such other period that the Secretary considers representative.

(d) *Definition of "extraordinary circumstances."* For purposes of paragraph (b) of this section, *extraordinary circumstances* means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation and (2) there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports not to increase during interim period.* The Secretary will not accept an agreement under paragraph (a) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of

comparable duration that the Secretary considers representative.

(g) *Procedure for suspension of investigation.* (1) The government of the affected country or the exporters, as appropriate, shall:

(i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 355.20; and

(ii) Serve a copy of an agreement preliminarily accepted by the Secretary on other parties to the proceeding not later than the day following the Secretary's preliminary acceptance.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States Government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) *Acceptance of agreement.* (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the FEDERAL REGISTER notice of "Suspension of Countervailing Duty Investigation," including the text of the agreement. If the Secretary has not already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously

ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.

(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication and will instruct the Customs Service to release any cash deposit or bond.

(4) If the Commission undertakes a review of an agreement under section 704(h) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) *Continuation of investigation.* (1) An interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 20 days after the date of publication of the notice of suspension of investigation, may request in writing that the Secretary continue the investigation. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and, if appropriate, the Com-

mission will continue the investigation.

(i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.

(j) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(3) of this section, the excess merchandise may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

(k) *Modification of quantitative restriction agreements.* At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultation under section 761(a) of the Act.

§ 355.19 Violation of agreement.

(a) *Immediate determination.* If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90-days before the date of publication of the notice of cancellation of agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise

the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under §355.18(i), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under paragraph (a)(1) of this section a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination;

(3) If the investigation was completed under §355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission if appropriate, and if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the FEDERAL REGISTER notice of "Countervailing Duty Order (Resumption of Countervailing Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination after notice and comment.* (1) Notwithstanding paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of section 704(d)(1) of the Act, the Secretary will publish in the FEDERAL REGISTER notice of "Invitation for Comment on Countervailing Duty Suspension Agreement."

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) If the Secretary determines that the signatory government or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act:

(A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under §355.18(a) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Countervailing Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under §355.18(b) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Countervailing Duty Investigation." If the Secretary continues to suspend an investigation based on a revised agreement accepted under §355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the agreement under section 704(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of §355.18(h)(4) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to

revise the agreement, the Secretary will publish in the FEDERAL REGISTER notice of the Secretary's decision under paragraph (b)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(c) *Additional signatories.* If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "violation."* For the purpose of this section, *violation* means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 355.20 Final determination.

(a) *In general.* (1) Not later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated individual countervailing duty rate for each person investigated and an estimated all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

(iii) If appropriate, a final finding on critical circumstances under § 355.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise entered,

or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require, for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination, a cash deposit or bond equal to the estimated net subsidy determined under paragraph (a) of this section.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) *Postponement to investigate upstream subsidies.* (1) Any interested party shall submit in writing any allegation of upstream subsidies not later than 15 days before the scheduled date for the Secretary's final determination under this part.

(2) If the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may:

(i) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(ii) If the Secretary's preliminary determination was affirmative:

(A) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(B) At the written request of the petitioner:

(i) Make the decision concerning upstream subsidization in the final determination under this section;

(ii) Postpone the final determination to not later than 165 days after the preliminary determination; and

(iii) End the suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(3) If the Secretary decides to postpone the final determination under paragraph (b)(2)(i) or (b)(2)(ii)(B) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's final determination and will publish in the FEDERAL REGISTER notice of "Postponement of Final Countervailing Duty Determination" stating the reason for the postponement.

(c) *Postponement for simultaneous investigations.* (1) If the Secretary simultaneously initiated antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary will:

(i) At the petitioner's request, postpone the final determination under this part to the date of the final determination under part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) of this section or § 355.15; and

(ii) If the Secretary postpones the final determination, end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(3) If the Secretary decides to postpone the final determination under paragraph (c)(1) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's final determination and will publish in the FEDERAL REGISTER notice of "Postponement of Final Countervailing Duty

Determination" stating the reason for the postponement.

(d) [Reserved]

(e) *Effect of decision not to exclude from order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, any net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be either the individual rate calculated for that person, the all-others rate, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate.

(f) *Commission access to information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(g) *Effect of negative final determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release any cash deposit or bond.

(h) *Disclosure.* Promptly after making the final determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

§ 355.21 Countervailing duty order.

Not later than seven days after receipt of notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with publication of the Secretary's affirmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the FEDERAL REGISTER a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination;

(c) Excludes from the application of the order any producer or exporter that the Secretary finds did not receive directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy on the merchandise from any program that the Secretary determined countervailable in the affirmative final determination; and

(d) Orders the suspension of liquidation ended for all entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under § 355.15(a), it would have found material injury.

§ 355.22 Administrative review of orders and suspension agreements.

(a) *Request for administrative review; withdrawal of request for review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order occurs), an interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or exporters covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or exporters.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in § 355.2(i), may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Countervailing Duty Administrative Review" or, if appropriate, "Partial Termination of Countervailing Duty Administrative Review."

(b) *Period under review.* (1) Except as provided in paragraph (b)(2), an administrative review under paragraph (a) of this section normally will cover entries or exports of the merchandise during the most recently completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed reporting year of the government of the affected country.

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the FEDERAL REGISTER notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.36;

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be at the rates found in the final results of review.

(d) [Reserved]

(e) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that the signatory foreign government or exporters have violated a suspension agreement or that the agreement no longer meets the requirements of §355.18, the Secretary will take appropriate action under §355.19. The Secretary may suspend the time limit in paragraph (c)(7) of this section while taking action under §355.19(b).

(f) [Reserved]

(g) *Automatic assessment of duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section at rates equal to the cash deposit of or bond for estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(h) *Changed circumstances review.* (1) If the Secretary concludes from available information, including information in a request under this paragraph for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the FEDERAL REGISTER notice of "Initiation of Changed Circumstances Countervailing Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under §355.36;

(iv) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(v) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review," including an invitation for argument consistent with §355.38;

(vi) Notify all parties to the proceeding of the preliminary results;

(vii) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(viii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and §355.25(d), that the Secretary will take based on the final results;

(ix) Publish in the FEDERAL REGISTER notice of "Final Results of Changed Circumstances Countervailing Duty Administrative Review;" and

(x) Notify all parties to the proceeding; and

(xi) Promptly after issuing the final results, provide to the parties to the proceeding which request disclosure a further explanation of the final results.

(2) Changed circumstances reviews may be requested at any time, including periods other than anniversary months.

(3) The Secretary will not initiate an administrative review under paragraph (h) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the

order or suspension occurs) after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(4) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(v) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review." In that event, the notification required in paragraph (h)(1)(vi) of this section will be given to all interested parties included on the Department's service list described in § 355.31(h).

(i) *Review at the direction of the president.* At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under § 355.17(b) or § 355.18(b)(3). The Secretary will:

(1) Publish in the FEDERAL REGISTER notice of "Initiation of Countervailing Duty Administrative Review at the Direction of the President," which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate, support the imposition of countervailing duties;

(2) Notify the Commission;

(3) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(4) Conduct, if appropriate, a verification under § 355.36;

(5) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;

(6) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38;

(7) Notify the Commission and all parties to the proceeding;

(8) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(9) Issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;

(10) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes; and

(11) Notify all parties to the proceeding;

(12) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the final results; and

(13) If the Secretary's final results of administrative review under paragraph (i)(9) of this section and the Commission's final results of review under section 762(a)(2) of the Act are affirmative:

(i) Publish in the FEDERAL REGISTER a "Countervailing Duty Order" under § 355.21 on or promptly after the date the agreement terminates; and

(ii) Order the suspension of liquidation of entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

(j) *Determination of countervailing duties for new shippers*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (j)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of a countervailing duty order to the United States (or, in the case of an order described in section 706(c) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 706(c) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a countervailing duty rate for such exporter or producer, the Secretary will conduct a review to establish a countervailing duty rate for such exporter or producer.

(2) *Certification of new shipper status.* A request described in paragraph (j)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, ex-

port the merchandise during the period of investigation.

(3) *Time for new shipper review*—(i) *In general.* The Secretary will commence a review under paragraph (j)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) the calendar month in which the anniversary of the date of publication of the order occurs; or

(B) the calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (j)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (j)(1), (j)(2), and (j)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of “Initiation of New Shipper Countervailing Duty Review;”

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a certification under § 355.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The countervailing duty rate, if any, for each person reviewed, or, if section 777A(e)(2)(B) of the Act applies,

a single estimated country-wide subsidy rate;

(v) Publish in the FEDERAL REGISTER notice of "Preliminary Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The countervailing duty rate, if any, for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(viii) Publish in the FEDERAL REGISTER notice of "Final Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure of a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (j)(4) of this section, and to collect a cash deposit of estimated countervailing duties on future entries.

(7) *Time limits*—(i) *In general*. The Secretary will issue preliminary results in a review conducted under paragraph (j)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception*. If the Secretary concludes that the case is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews*. The results of a review under paragraph (j)(1) of this section shall be the basis for the assessment of countervailing duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews*. Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (j)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25137, May 11, 1995]

§ 355.23 Provisional measures deposit cap.

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under § 355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under § 355.22 if the cash deposit or bond is more than the net subsidy.

§ 355.24 Interest on certain overpayments and underpayments.

(a) *In general*. The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or

withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 355.25 Revocation of orders; termination of suspended investigation.

(a) *Revocation or termination based on absence of subsidy.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) The government of the affected country has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and

(ii) It is not likely that the government of the affected country will in the future reinstate for the merchandise those programs or substitute other countervailable programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) All producers and exporters covered at the time of revocation by the order or the suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years; and

(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke an order in part if the Secretary concludes that:

(i) One or more producers or exporters covered by the order have not applied for or received any net subsidy on

the merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for producers or exporters that the Secretary previously has determined have not received any net subsidy on the merchandise, the producers or exporters agree in writing to their immediate reinstatement in the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under § 355.22(h) that the producer or exporter, subsequent to the revocation, has received any net subsidy on the merchandise.

(b) *Request for revocation or termination.* (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(1) of this section if the government submits with the request its certification that it has satisfied, during the period described in § 355.22(b)(1), the requirements of paragraph (a)(1)(i) of this section and that it shall not reinstate for the merchandise those programs or substitute other countervailable programs; or

(2) During the fifth and subsequent annual anniversary months of the publication of an order or suspended investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:

(i) The certifications required under § 355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and

(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the

merchandise from any program described in paragraph (a)(2)(ii) of this section.

(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:

(i) The certifications required under § 355.22(a)(2);

(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and

(iii) The agreement described in paragraph (a)(3)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under paragraph (b) of this section, the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).

(2) In addition to the requirements of § 355.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(c)(1), notice of “Request for Revocation of Order (in Part)” or, if appropriate, “Request for Termination of Suspended Investigation;”

(ii) Conduct a verification under § 355.36;

(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary’s preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(c)(5), notice of “Intent to Revoke Order (in Part)” or, if appropriate, “Intent to Terminate Suspended Investigation;”

(v) Include in the final results of review, under § 355.22(c)(7), the Secretary’s final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary’s final decision under paragraph (c)(2)(v) of this section is affirmative, publish with the notice of final results of review, under § 355.22(c)(8), notice of “Revocation of

Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(d) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) The order or suspended investigation no longer is of interest to interested parties, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(h).

(3) In addition to the requirements of § 355.22(h), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), notice of “Consideration of Revocation of Order (in Part)” or, if appropriate, “Consideration of Termination of Suspended Investigation;”

(ii) If the Secretary’s conclusion, as described in paragraph (d)(2) of this section, is not based on a request, the Secretary, not later than the date of publication of the notice described in paragraph (d)(3)(i) of this section, will serve written notice of the consideration of revocation or termination on each interested party listed on the Department’s service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product;

(iii) Conduct a verification, if appropriate, under § 355.36;

(iv) Include in the preliminary results of review, under § 355.22(h)(1)(iv), the Secretary’s decision whether there

is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(v) If the Secretary's preliminary decision under paragraph (d)(3)(iv) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(h)(1)(v), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(vi) Include in the final results of review, under § 355.22(h)(1)(viii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vii) If the Secretary's final decision under paragraph (d)(3)(vi) of this section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(ix), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.

(iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the FEDERAL REGISTER the notice described in paragraph (d)(3)(vii) of this section.

(5) If the Secretary under paragraph (d) of this section revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(e) *Revocation or termination based on injury reconsideration.* If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would not be materially retarded, by reason of imports of the merchandise covered by a countervailing duty order or suspension agreement, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the FEDERAL REGISTER notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

§ 355.27 Procedures for initiation of downstream product monitoring.

(a) *In general.* A domestic producer of an article that is like a component part or a downstream product may file an application pursuant to this section requesting that the Secretary designate a downstream product for monitoring.

(b) *Contents of application.* The application shall contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product incorporated into such downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the home market country of both the downstream and component products and the name of any intermediate country through which these products are transshipped;

(5) The name and address of all known producers of the component part and downstream product in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21 on merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing orders issued under § 353.21 or § 355.21 on merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(c) *Determination of sufficiency of application*—(1) *In general.* Within 14 days after an application is filed under paragraph (b) of this section the Secretary will determine the sufficiency of the application. An application is considered to be filed at the time it is received by the Secretary. In order to determine that an application is sufficient, the Secretary must find:

(i) There is a reasonable likelihood that imports of the downstream product into the United States will increase as an indirect result of any diversion with respect to the component part; and

(ii) That—

(A) The component part is already subject to monitoring with respect to the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984, or

(B) Merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21, or

(C) Merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least two antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21.

(2) In making a determination under paragraph (c)(1)(i) of this section, the Secretary will consider all factors the Secretary considers relevant and may, if appropriate, take into account such factors as:

(i) The value of the component part in relation to the value of the downstream product;

(ii) The extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(iii) The relationship between the producers of the component part and producers of the downstream product.

(d) *Notice of determination.* The Secretary will publish in the FEDERAL REGISTER notice of each affirmative or negative “monitoring” determination made under paragraph (c) of this section and if the determination under (c)(1)(i) and under any clause of (c)(1)(ii) are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission and to its employees directly involved in the monitoring all information upon which the Secretary based the initiation.

(e) *Action on basis of monitoring reports.* The Secretary will review the information in any monitoring reports

submitted to the Department by the Commission under Section 780 of the Act and will:

(1) Consider the information in determining whether to initiate an investigation under § 355.11 regarding any downstream product; and

(2) Request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to the component part.

(f) *Definitions*—(1) *Downstream product* means any manufactured product imported into the United States into which a component part is incorporated.

(2) *Component part* means any imported article which:

(i) During the previous five-year period, ending on the date on which the application is filed under paragraph (b) of this section, has been subject to—

(A) An antidumping or countervailing duty order issued under § 353.21 or § 355.21 that required the deposit of estimated antidumping or countervailing duties, applicable to the particular manufacturer or exporter, at a rate of at least 15 percent *ad valorem* or,

(B) A suspension agreement entered into under § 353.18 or § 355.18 after a preliminary determination under § 353.15 or § 355.15 was made by the Secretary which included a determination that the estimated net antidumping margin or subsidy rate, applicable to the particular manufacturer or exporter, was at least 15 percent *ad valorem*; and

(ii) Due to its inherent characteristics, is routinely used as a major part, material, component, assembly, or sub-assembly in a downstream product.

(g) *Where to file; time of filing; format and number of copies.* The requirements of § 355.31 (d), (e), (f), and (g) apply to this section.

[55 FR 9052, Mar. 9, 1990]

§ 355.28 Procedures for the correction of ministerial errors.

(a) *In general.* The Secretary will disclose the calculations performed in connection with a final countervailing duty determination pursuant to § 355.20, or in a final results of an administrative review of a countervailing duty

order pursuant to § 355.22, to any party to the proceeding making a request in accordance with this section. A party to the proceeding must file such a request in writing with the Secretary within five business days of the date of publication of the relevant final determination or final results of administrative review. A party to whom the Secretary has disclosed final calculations may submit comments concerning any ministerial errors in such calculations.

(b) *Time limits.* Comments must be filed within five business days after the date of disclosure unless the Secretary extends the time limit based upon a written request for extension that is filed within five business days after the date of disclosure and showing cause for such extension. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list. Interested parties may file replies to any comments submitted under paragraph (a) of this section. Any replies must be filed with the Secretary within five business days after the date the relevant comments under paragraph (a) are received by that party and shall be served on all interested parties on the Department's service list. All service of interested parties on the Department's service list pursuant to this paragraph shall be in accordance with § 355.31(g). Notwithstanding the provisions of § 355.34(d), the Secretary may permit representatives to retain proprietary information released under administrative protective order under § 355.34 until the expiration of the time for filing for judicial review of the Secretary's correction of any ministerial errors. If the Secretary determines there are no ministerial errors, proprietary information will be returned in accordance with the provisions of § 355.34(d).

(c) *Corrections.* The Secretary will analyze any comments received and will correct any ministerial errors by amending the final countervailing duty determination or final results of administrative review. Such corrections will be published in the FEDERAL REGISTER. A correction notice does not alter the anniversary month of an order or suspension of investigation for

purposes of requesting an administrative review under § 355.22.

(d) *Definition of “ministerial error”.* For purposes of this section, *ministerial error* means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

[55 FR 9053, Mar. 9, 1990]

§ 355.29 Scope determination.

(a) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of a countervailing duty order, the Secretary will initiate an inquiry and notify all interested parties on the Department’s service lists of its initiation of a scope inquiry.

(b) *By application.* Any interested party, as defined in § 355.2(i), may file an application to determine whether a particular product is within the scope of an order. The application shall contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number;

(2) A statement of the interested party’s position as to whether the product is within the scope of an order, including—

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary’s or the Commission’s investigation.

Where all of these conditions are met, the Secretary will evaluate the application. If the Secretary determines that no inquiry is warranted to determine whether a product is included within the scope of an order, the Secretary will issue a final ruling as to whether the merchandise which is the subject of the application is included in the existing order. The Secretary will, by mail, notify all interested parties on the Department’s service lists of its de-

termination. If, however, the Secretary determines that a scope inquiry is warranted, the Secretary will, by mail, notify all interested parties on the Department’s service lists of the initiation of a scope inquiry.

(c) *Notice.* Any initiation of a scope inquiry issued pursuant to paragraphs (a) or (b) of this section will include:

(1) A description of the product that is the subject of the scope inquiry; and

(2) An explanation of the reasons for the Secretary’s decision to initiate a scope inquiry; and

(3) A schedule for submission of comments.

(d) *Procedures for scope inquiry.* Except as provided under paragraph (d)(6) of this section, the procedures for scope inquiries will be as follows:

(1) Interested parties shall file any comments not later than twenty days after receipt of the notification described in paragraph (c) of this section, unless the Secretary alters this time limit;

(2) Not later than the time limit stated in the notification described in paragraph (c) of this section (ordinarily five days after the time limit for filing the comments described in paragraph (d)(1) of this section), any interested party may submit rebuttal comments;

(3) Whenever the Secretary determines that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order. The Secretary will, by mail, notify all interested parties on the Department’s service lists of its preliminary scope ruling and provide an invitation for comment. Unless otherwise specified, the Secretary will provide all interested parties thirty days from the date of receipt of the notification for comment;

(4) The Secretary may issue questionnaires or verify submissions received, where appropriate;

(5) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included in the existing order, including an explanation of the factual and legal

conclusions on which the final ruling is based. The Secretary will, by certified mail, return receipt requested, notify all interested parties on the Department's service lists of its final scope ruling;

(6) When a § 355.22 review is in progress at the time the Secretary provides the notification outlined in paragraph (c) of this section, the scope investigation, in the Secretary's discretion, may be conducted in conjunction with a § 355.22(c) review;

(7) With respect to countervailing duty proceedings in which the Commission made an affirmative injury determination, prior to issuing a ruling in accordance with paragraph (3) or (5) of this section or § 355.22(c)(4) or § 355.22(c)(8) to include products within the scope of an order pursuant to—

(i) Paragraph (e) of this section, other than operations in the United States involving minor completion or assembly,

(ii) Paragraph (f) of this section, or

(iii) Paragraph (h) of this section, with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product,

the Secretary will notify the Commission in writing of the proposed inclusion of such products in the order. Upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion and any such consultation will be completed within 15 days after the date of such request. If the Commission believes, after such consultation, that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order is based; and

(8) On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of scope rulings completed within the last three months. This list will include the case name, reference number and a brief description of the ruling.

(e) *Products completed or assembled in the United States*—(1) *In General.* If—

(i) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(ii) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(iii) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in paragraph (e)(1)(ii) is small,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include within the scope of such order the imported parts or components referred to in paragraph (e)(1)(ii) that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include parts or components in an order under paragraph (e)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in paragraph (e)(1) of this section applies; and

(iii) Whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(f) *Products completed or assembled in other foreign countries*—(1) *In General.* If—

(i) A product sold in the United States is of the same class or kind as the merchandise that is the subject of an order,

(ii) Before importation into the United States, such imported product is completed or assembled in another foreign country from merchandise which is subject to such order, or is produced in the foreign country with respect to which such order applies,

(iii) The difference between the value of such imported products and the value of the merchandise described in paragraph (f)(1)(ii) is small, and

(iv) The Secretary determines that action is appropriate under this paragraph to prevent evasion of such order, the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include such imported products within the scope of such order at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include a product in an order under paragraph (f)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the product described in paragraph (f)(1)(ii) is related to the person who uses the merchandise described in paragraph (f)(1)(ii) to assemble or complete in the foreign country the product that is subsequently imported into the United States; and

(iii) Whether imports into the foreign country of the product described in paragraph (f)(1)(ii) have increased after the issuance of such order.

(g) *Minor alterations of merchandise—*

(1) *In general.* The class or kind of merchandise subject to an investigation or order will include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) *Exception.* Paragraph (g)(1) of this section will not apply with respect to altered merchandise if the Secretary determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation or order.

(h) *Later-developed products—*(1) *In general.* For purposes of determining whether a product developed after a countervailing duty investigation is initiated (hereafter in this paragraph referred to as the “later-developed merchandise”) is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to

which the order was originally issued (hereafter in this paragraph referred to as the “earlier merchandise”);

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

The Secretary will take into account any advice provided by the Commission under paragraph (d)(7) of this section before making a determination under this paragraph.

(2) *Exclusion from orders.* The Secretary may not exclude later-developed products from an order merely because the products:

(i) Are classified under the tariff classification other than that identified in the petition or the Secretary’s prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products.

(i) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (e) through (h) of this section, in considering whether a particular product is within the class or kind of merchandise described in an existing order, the Secretary will take into account the following:

(1) The descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product; and

(iv) The channels of trade.

(j) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry pursuant to paragraph (c) of this section, and the subject product is already subject to suspension of liquidation, that suspension of liquidation will be continued pending a preliminary or a final scope ruling. Any suspension of liquidation will be at the cash deposit of estimated duty rate that will apply if the subject product is ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling pursuant to paragraph (d)(3) of this section to the effect that the subject product is included within the scope of the order, any suspension of liquidation described in paragraph (j)(1) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each suspended entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the subject product is *not* included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(3) If the Secretary issues a final scope ruling, pursuant to either paragraph (b) or (d)(5) of this section, to the effect that the subject product is included within the scope of the order, any suspension of liquidation pursuant to paragraph (j)(1) or (j)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation

on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(k) *Where to file; time of filing; format and number of copies.* The requirements of § 355.31 (d), (e), (f), and (g) apply to this section.

[55 FR 9054, Mar. 9, 1990]

Subpart C—Information and Argument

§ 355.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review other than a review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review; or

(iii) For the Secretary's final results of an administrative review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review.

(2) Any interested party, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2, may submit factual information to rebut, clarify, or correct factual information submitted by an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party, or, if appropriate, made available under administrative protective order to the interested party.

(3) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit. The Secretary will return such information to the submitter with written notice stating the reasons for return of the information.

(b) *Questionnaire responses and other submissions on request.*

(1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

(4) Except as provided in § 355.32(b) and subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time limits for allegations of subsidies.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, later than:

(i) In an investigation, 40 days before the scheduled date for the Secretary's preliminary determination;

(ii) In an administrative review other than a review under § 355.22(j), 120 days after the date of publication of the notice of initiation of the review; or

(iii) In an administrative review under § 355.22(j), 60 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to file; time of filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., NW., Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following business day.

(e) *Format and number of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, submitters shall make all submissions in the format specified in paragraph (e) of this section. The Secretary may refuse

to accept for the record of the proceeding any submission that does not conform to the requirements of paragraph (e) of this section.

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including any public summaries required under §355.32(b) as substitutes for the portions for which the person has requested proprietary treatment; and if administrative protective order versions are required to be served pursuant to §355.31(g) (1) or (2), submit one copy of the cover page, marked as described in paragraph (e)(2)(v), together with only those pages that differ from the public or proprietary versions. In an administrative review, scope inquiry, or downstream product monitoring application, submit seven copies of any document, except a computer printout; and if a person has requested that the Secretary treat portions of the document as proprietary information, submit three copies of a public version of the document, as described above; and submit one copy of any administrative protective order versions required to be served pursuant to §355.31(g) (1) or (2), as described above. In an investigation, administrative review, scope inquiry, or downstream product monitoring application, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. Securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right-hand corner with the following information in the following format:

- (i) On the first line, except for a petition, the Department case number;
- (ii) On the second line, the total number of pages in the document including cover pages, appendices, and any unnumbered pages;
- (iii) On the third line, state whether the document is for an investigation, scope inquiry, downstream product monitoring application, or an adminis-

trative review and, if the latter, the inclusive dates of the review;

(iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either "Document May be Released Under APO" or "Document May Not be Released Under APO" (see §§355.32(c) and 355.34);

(v) For administrative protective order versions, described in §355.31(g) (1) or (2), complete the marking as required in paragraphs (i)-(iv) above for the proprietary document, but conspicuously mark the first page "APO Version Prepared for [Name of party entitled to receive materials]"; and

(vi) For public versions of proprietary documents, required by §355.32(b), complete the marking as required in paragraphs (e)(2) (i) through (iv) of this section for the proprietary document, but conspicuously mark the first page "Public Version."

(3) *Computer tapes and printouts.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form and cannot supply the requested information on computer tape without unreasonable additional burden in time and expense. In an investigation or administrative review, the tape shall be accompanied by three copies of any computer printout and three copies of the public version of the printout.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translation.

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under §355.18(g)(1)(i), and factual information submitted under §355.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve a copy of the document, on all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is involved, the

submitter shall serve the following administrative protective order versions:

(1) With respect to parties to the proceeding that are subject to administrative protective orders under § 355.34, the submitter of a document shall include that proprietary information that the interested party is entitled to receive under the terms of the administrative protective order, as well as the party's own proprietary information, but no other proprietary information;

(2) With respect to interested parties that are not subject to an administrative protective order, but when the submission contains that interested party's proprietary information, the submitter of a document shall serve the interested party with a version that contains just the interested party's own proprietary information.

The Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.

(h) *Service list.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party which asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

(i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:

(1) For the interested party's official responsible for presentation of the factual information: "I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate."

(2) For interested party's legal counsel or other representative: "I, (name), of (law or other firm), counsel or representative to (interested party), certify that (i) I have read the attached submission, and (ii) based on the information made available to me by (interested party), I have no reason to be-

lieve that this submission contains any material misrepresentation or omission of fact."

[53 FR 52344, Dec. 27, 1988, as amended at 55 FR 9056, Mar. 9, 1990; 57 FR 30903, July 13, 1992; 60 FR 25139, May 11, 1995]

§ 355.32 Request for proprietary treatment of information.

(a) *Submission and content of request.*

(1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information, or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested" and the warning "Bracketing of proprietary information not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. After the bracketing becomes final, recipients may divulge the public version of the document to anyone not subject to the administrative protective order. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

(3) The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 355.4. The request and explanation shall be a part of or securely

bound with the document containing the information.

(b) *Public Summary.* Except as provided in paragraph (b)(3) of this section, not later than one business day after submitting information for which proprietary treatment is requested, any person who requests proprietary treatment shall provide to the Secretary:

(1) An adequate public summary of all proprietary information, incorporated in the public version of the document (generally, numeric data are adequately summarized if grouped or presented in terms of indices, or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent representative of that portion is individually summarized in this manner); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(3) All requests for proprietary treatment of information contained in petitions submitted under § 355.12 and proposed suspension agreements submitted under § 355.18(g)(1)(i) shall be accompanied by a public summary and statement described in paragraphs (b)(1) and (b)(2) of this section.

(c) *Agreement to release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of information as a result of nonconforming request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section and in any event will not consider the information. If the Secretary returns the information, the Secretary will provide a written explanation of the reasons why

it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than two business days after receipt of the Department's explanation for rejection of the information.

(e) *Status during consideration of request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide not later than 14 days after the Secretary receives the request.

(f) *Treatment of proprietary information.* Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person. The Secretary may disclose factual information which the Secretary decides is proprietary only to:

(1) A representative of an interested party who requests and is granted an administrative protective order under § 355.34;

(2) An employee of the Department directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to a countervailing duty proceeding on the merchandise;

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and

(6) A charged party or counsel for the charged party under Part 354 of this title (19 CFR part 354).

(g) *Denial of request for proprietary treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return the information to the submitter with written notice stating the reasons for return of the information and will not consider it in the proceeding.

[53 FR 52344, Dec. 27, 1988, as amended at 57 FR 30903, July 13, 1992]

§ 355.33 Information exempt from disclosure.

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 355.34 Disclosure of proprietary information under administrative protective order.

(a) *In general.* Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the Secretary shall require all proprietary information presented to, or obtained by it, during a segment of a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) to be disclosed to interested parties who are parties to the proceeding under a protective order described in this section, regardless of when the information is submitted during the segment of the proceeding.

(b) *Request for disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than the later of:

(i) 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation under § 355.11 or § 355.13, or the notice of initiation of administrative review under § 355.22; or

(ii) 30 days after the initiation of a scope inquiry pursuant to § 355.29 (a) or (b); or

(iii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38 are due.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding in which it was submitted;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that:

(i) A representative determined to have violated a protective order may be subject to any or all of the sanctions listed in part 354 of this title; and

(ii) The firm of which a person determined to have violated a protective order is a partner, associate, or employee, and any partner, associate, employer, or employee of such person, may be subject to any or all of the sanctions listed in part 354 of this title.

(5) The Secretary will decide whether to disclose information under administrative protective order:

(i) Not later than 14 days after the date on which the information is submitted; or

(ii) If—

(A) The person who submitted the information raises objection to its release, or

(B) The information is unusually voluminous or complex,

not later than 30 days after the date on which the information is submitted.

(6) If the Secretary decides that disclosure of information under administrative protective order is proper under paragraph (b)(5) of this section:

(i) With respect to proprietary information submitted to the Secretary on or before the date of the decision to disclose, the submitting party shall, within two business days of the date of decision, serve the party which requested such disclosure, in accordance with § 355.31(g); and

(ii) The submitting party shall serve all future submissions of proprietary information directly on the requesting party as required by § 355.31(g).

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to require disclosure of proprietary information under administrative protective order without the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons therefor and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider withdrawn information. Furthermore, if the submitter does not withdraw the information but fails to serve the party requesting such information, in accordance with § 355.34(b)(6), the Secretary will not consider such information.

(d) *Disposition of proprietary information disclosed under administrative protective order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1) of this section.

(e) *Violation of administrative protective order.* The procedures for investigating any alleged violation of an administrative protective order issued under this section and for imposing

sanctions for a violation of such order are set forth in part 354 of this title (19 CFR part 354).

[53 FR 52344, Dec. 27, 1988, as amended at 55 FR 9056, Mar. 9, 1990]

§ 355.35 Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make the decision in question or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 355.36 Verification of information.

(a) *In general.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 355.18(i) or § 355.20;

(ii) A revocation under § 355.25;

(iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; and

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and exporters included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and exporters included in the investigation or review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative

review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for verification.* In verifying under this section, the Secretary will notify the government of the affected country in which verification takes place that employees of the Department will visit with producers, exporters, or government agencies in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.37 Best information available.

(a) *Use of best information available.* The Secretary may use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What is best information available.* The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available.

§ 355.38 Written argument and hearings.

(a) *Written argument.* The Secretary will consider in making the final determination under § 355.18(i) or § 355.20 or the final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary (and re-

ceived within the time limit specified by the Secretary), that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States Government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any written argument submitted after the time limits specified in this section or by the Secretary.

(b) *Request for hearing.* Not later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters this time limit, any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs. To the extent practicable, a party requesting a hearing shall identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a "case brief":

(i) Not later than 50 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit; or

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review.

(2) The case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results.

(d) *Rebuttal brief.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results, ordinarily five days in an investigation and seven days in an administrative review after the time limit for filing the case brief, any interested party or U.S. Government

agency may submit a "rebuttal brief." The rebuttal brief shall separately present in full all rebuttal arguments, responding only to arguments raised in case briefs.

(e) *Service of briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country, on any interested party on the Department's service list, and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under § 355.31(h) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, service shall be by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties (including agents) served and, for each, the date and method of service.

(f) *Hearings.* If an interested party submits a request under paragraph (b) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, two days after the scheduled date for submission of rebuttal briefs and, in an administrative review, seven days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, or the office or division director responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness

testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may request interested parties to present additional written argument.

(g) *Where to file; time of filing.* The requirements in § 355.31(d) apply to this section.

(h) *Format and number of copies.* The requirements in § 355.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 355.32(b).

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 355.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25139, May 11, 1995]

§ 355.39 Subsidy practice discovered during investigation or review.

(a) *Inclusion in proceeding.* If during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review.

(b) *Deferral of examination.* If the Secretary concludes that insufficient time remains, before the scheduled date for

the Secretary's final determination or final results of review, to examine the practice described in paragraph (a) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice; or

(2) During an investigation or review, defer consideration of the newly discovered practice until the next review under § 355.22(c).

(c) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovered and whether or not it will be included in the then ongoing proceeding.

§ 355.40 Likelihood of continued subsidization; revocation under section 753 of the Act.

(a) *Notification of domestic interested parties.* (1) As soon as possible after the opportunity arises for requesting an investigation under section 753 of the Act, the Secretary will:

(i) Notify domestic interested parties on the Department's service list by first class mail or personal service of the opportunity to request an injury investigation by the Commission; and

(ii) Publish in the FEDERAL REGISTER a notice informing domestic interested parties of the opportunity to request an injury investigation by the Commission.

(2) The notification provided for in paragraph (a)(1) of this section will inform domestic interested parties of the opportunity to request that reviews of outstanding antidumping orders or findings and countervailing duty orders under section 751(c) of the Act involving the same or comparable merchandise be expedited.

(3) For purposes of paragraph (a) of this section, "domestic interested parties" means interested parties described in paragraphs (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, or in section 771(9)(G) of the Act.

(b) *Suspension of liquidation.* (1) The Secretary will instruct the Customs Service to suspend liquidation with respect to entries of subject merchandise made on or after:

(i) In the case of an order described in section 753(a)(1)(B)(i) of the Act, the

date on which the country described in section 753(a)(1)(A) of the Act becomes a Subsidies Agreement country within the meaning of section 701(b) of the Act; or

(ii) In the case of an order described in section 753(a)(1)(B)(ii) of the Act, the date on which such order is issued.

(2) Liquidation shall be suspended under paragraph (b)(1) of this section at the cash deposit rate in effect on the date described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, whichever is applicable.

(c) *Net countervailable subsidy; nature of subsidy.* The Secretary will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked. The Secretary will normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751 of the Act. At the same time, the Secretary also will inform the Commission of the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement, as defined in section 771(8)(A) of the Act.

(d) *Initiation and conduct of review.*—

(1) *In general.* Where the Secretary deems it necessary in order to provide to the Commission the information described in paragraph (c) of this section, the Secretary will initiate a review of the countervailing duty order in question.

(2) *Notice of initiation of review.* Where the Secretary initiates a review under paragraph (d)(1) of this section, the Secretary will publish in the FEDERAL REGISTER a notice of "Initiation of Countervailing Duty Section 753 Review."

(3) *Conduct of review.* Following the initiation of a review under paragraph (d)(1) of this section, the Secretary will:

(i) If the Secretary considers it appropriate, send to interested parties and other persons, or a sample of interested parties and other persons, questionnaires requesting factual information for the review;

(ii) If the Secretary considers it appropriate, conduct a verification under § 355.36;

(iii) Issue, based on available information, preliminary results of review that include the factual and legal conclusions on which the preliminary results are based;

(iv) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Section 753 Review," including an invitation for argument consistent with § 355.38;

(v) Promptly notify all parties to the proceeding of the preliminary results, and provide to such parties which request disclosure a future explanation of the calculation methodology used in reaching the preliminary results;

(vi) Issue final results of review that include the factual and legal conclusions on which the final results are based;

(vii) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Section 753 Review;" and

(viii) Promptly notify all parties to the proceeding and the Commission of the final results, and provide such parties which request disclosure a further explanation of the calculation methodology used in reaching the final results.

(e) *Effect of affirmative Commission determination.* Upon being notified by the Commission that it has made an affirmative determination under section 753(a)(1) of the Act:

(1) The Secretary will order the termination of the suspension of liquidation required pursuant to paragraph (b) of this section; and

(2) The countervailing duty order shall remain in effect until revoked, in whole or in part.

(f) *Effect of negative Commission determination.* Upon being notified by the Commission that it has made a negative determination under section 753(a)(1) of the Act, the Secretary will revoke the countervailing duty order and refund, with interest, any estimated countervailing duty collected during the period liquidation was suspended pursuant to paragraph (b) of this section.

[60 FR 25139, May 11, 1995]

Subpart D—Quota Cheese Subsidy Determinations

§ 355.41 Definition of subsidy.

For purposes of this subpart, *subsidy* means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Act.

§ 355.42 Annual list and quarterly update.

(a) *Annual list.* Not later than January 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether any foreign government is providing a subsidy, as defined in § 355.41, with respect to any article of quota cheese, as defined in section 701(c)(1) of the Trade Agreements Act, and will publish in the FEDERAL REGISTER a list of the type and amount of each subsidy. The Secretary will incorporate in each annual list any changes and additional subsidies for the preceding calendar year determined under paragraph (b) of this section or under § 355.43(b).

(b) *Quarterly update.* Not later than April 1st, July 1st, and October 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether there have been any changes in or additions to the latest annual list, and will publish in the FEDERAL REGISTER a quarterly update of those changes and additions.

§ 355.43 Determination upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list may request in writing that the Secretary determine whether there are any changes or additions. The person shall file the request at the time and place specified in § 355.31(d). The request shall allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and shall contain the following, to the extent reasonably available to the requesting person:

(1) The name and address of the person;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of the article of quota cheese; and

(4) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

The requirements of § 355.31(d) and (f) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the FEDERAL REGISTER notice of any changes or additions.

§ 355.44 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under § 355.43(b), whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update. The Department of Agriculture regulations concerning complaints of price-cutting by subsidized imports of quota cheese are published in 7 CFR part 6.

§ 355.45 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Subpart E—Effective Dates

§ 355.51 Effective dates of amendments to the Tariff Act of 1930 made by the Omnibus Trade and Competitiveness Act of 1988.

In accordance with section 1337 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418) (“the 1988 Act”), the amendments to the Tariff Act of 1930 made by the 1988 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section, all amendments made by Title I, Subtitle C, Part II of the 1988 Act which affect authorities administered by the Secretary are deemed effective as of August 23, 1988.

(b) Amendments made by sections 1312, 1315, 1316, 1318, 1325, 1327, 1331, and 1332 of the 1988 Act which affect authorities administered by the Secretary are deemed to take effect immediately with respect to all investigations, section 736(c) reviews, or section 751 reviews initiated after August 23, 1988.

(c) The amendment made by section 1324 of the 1988 Act which affects authorities administered by the Secretary is deemed to apply only to investigations initiated after August 23, 1988.

(d) The amendments made by sections 1321(a) and 1334 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 23, 1988.

(e) The amendments made by section 1321(b) and 1335 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to entries, and withdrawals from warehouse for consumption that are liquidated on or after August 23, 1988.

(f) The amendment made by section 1319 is deemed effective with respect to all section 736(c) and section 751 reviews initiated on or after August 23, 1988, as well as to all section 736(c) and section 751 reviews for which there is a request for revocation pending on August 23, 1988.

(g) Notwithstanding the provisions of paragraphs (a) through (f) of this section, the Secretary may implement the amendments of the 1988 Act at a date later than August 23, 1988, if the Secretary determines that implementation in accordance with paragraphs (a) through (f) of this section would prevent the Department from complying with other requirements of law.

[55 FR 9057, Mar. 9, 1990]

ANNEX I—LIST OF COUNTRIES UNDER THE AGREEMENT

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), Finland, United Kingdom for Hong Kong, India, Indonesia, Israel, Japan, Korea, Norway, Pakistan, Philippines, Sweden, Switzerland, Turkey, and Uruguay. *See* section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. *See* section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in §355.31(d).

ANNEX II—TIME LIMITS FOR SUBMISSIONS SPECIFIED IN THIS PART

Description of time limit ¹	Section
Administrative protective order:	
Request for disclosure under	355.34(b)
Return of information released under	355.34(d)
Withdrawal of information subject to	355.34(c)
Administrative review:	
Request for review of all producers or exporters	355.22(a)
Request for changed circumstances review	355.22(h)
Request for review of individual producers or exporters	355.22(a)
Withdrawal of request for review	355.22(a)
Commission:	
Filing of petition with	355.12(c)
Request for review of revised suspension agreement	355.19(b)

Description of time limit ¹	Section
Request for review of suspension agreement	355.18(i)
Critical circumstances findings:	
Request for	355.16(a)
Request for final finding only	355.16(d)
Request for preliminary and final finding	355.16(b)
Exclusion from order:	
Request for	355.14(a)
Factual information:	
Questionnaire responses in administrative reviews	355.31(b)
Request for disclosure of, under protective order	355.34(b)
Request for extension of time limits to submit	355.31(b)
Request for extension of time limits to submit allegations	355.31(c)
Submission of, regarding preliminarily accepted suspension agreements	355.18(g)
Submission of subsidy allegations	355.31(c)
Submission of standing allegations	355.31(c)
Submissions of, in general	355.31(a)
Withdrawal of, subject to disclosure under protective order	355.34(c)
Final determination:	
Petitioner's request to postpone in simultaneous investigations	355.20(c)
Request to investigate upstream subsidy	355.20(b)
Hearings:	
Requests for	355.38(b)
Petition:	
Amendment to	355.12(e)
Filing with the Commission	355.12(c)
Filing with the Secretary of the Treasury	355.12(h)
Postponement of determinations:	
Petitioner's request to postpone final—simultaneous investigations	355.20(c)
Petitioner's request to postpone preliminary	355.15(c)
Preliminary determination:	
Petitioner's request to postpone	355.15(c)
Request to investigate upstream subsidy	355.15(d)
Waiver of verification	355.15(f)
Proprietary information:	
Request for treatment as	355.32(a)
Resubmission of, in proper form	355.32(d)
Submission of agreement to release under protective order	355.32(c)
Submission of public summary	355.32(b)
Revocation of order:	
Request for	355.25(b)
Objections to, in the absence of requests for review	355.25(d)
Service:	
Preliminarily accepted suspension agreements	355.18(g)
Case and rebuttal briefs	355.38(e)
Standing:	
Allegation of lack of	355.31(c)
Suspension of investigation:	
Request for Commission review of agreement	355.18(i)
Request for Commission review of revised agreement	355.19(b)
Request for termination of	355.25(b)
Request to continue investigation	355.18(i)
Service of preliminarily accepted agreement	355.18(g)
Submission of factual information	355.18(g)
Submission of proposed agreement	355.18(g)
Submission of written argument	355.18(g)
Subsidy allegations:	
Request to investigate additional subsidy	355.31(c)
Request to investigate upstream subsidy	355.15(d)
.....	355.20(b)
Termination of suspended investigation:	
Request for	355.25(b)
Objections to, in the absence of requests for review	355.25(d)

§ 356.1

Description of time limit ¹	Section
Verification:	
Request for in administrative reviews	355.36(a)
Waiver of	355.15(f)
Written argument:	
Submission of case brief	355.38(c)
Submission of rebuttal brief	355.38(d)
Service of case and rebuttal briefs	355.38(e)
Submission of, regarding preliminarily accept- ed suspension agreements	355.18(g)

¹ Documents are filed when stamped by the Central Records Unit of the Department of Commerce. See § 355.31(d) for hours of operation.

PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Subpart A—Scope and Definitions

Sec.

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Subpart B—Procedures for Commencing Review of Final Determinations

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356.9 Persons authorized to receive proprietary information.

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AUTHORITY: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

SOURCE: 59 FR 229, Jan. 3, 1994, unless otherwise noted.

Subpart A—Scope and Definitions

§ 356.1 Scope.

This part sets forth procedures and rules for the implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 402(g) of the North American Free Trade Agreement Implementation Act of 1993.

§ 356.2 Definitions.

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by subpart D of this part;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the North American Free Trade Agreement between Canada, the United Mexican States and the United States, signed on December 17, 1992; or, with respect to binational panel or extraordinary challenge proceedings underway as of such date, or any binational panel or extraordinary challenge proceedings that may proceed between Canada and the United States following any withdrawal from the Agreement by Canada or the United States, the United States-Canada Free Trade Agreement between Canada and the United States, which came into force on January 1, 1989;